

Claimant was injured in a violent assault by a boyfriend, Mr. Doug Staggs. On the evening of April 7, 1999, claimant was working as a bartender for respondent. While she was working, claimant's boyfriend, Mr. Staggs, called and asked for her help. He initially called because he had had a flat tire on the bicycle he was using to get to and from work. She was not able to help because she was working. Mr. Staggs later called and became upset when he learned claimant was going to be working late to cover for another employee. In that phone conversation, Mr. Staggs threatened claimant. Mr. Staggs showed up at respondent's club 20 or 30 minutes later. The evidence is unclear about what happened at this point in the chronology. Claimant was injured and does not remember all of the events.

Claimant testified at the preliminary hearing that Mr. Staggs came to the club and sat and talked with one of the regular customers, a Mr. Smith, for 15 to 20 minutes. Mr. Staggs and Mr. Smith then got into a disagreement. Claimant stepped in, and the next thing she remembers is at the hospital. The ALJ found this version of the events was not credible, in part because of testimony in the criminal proceedings against Mr. Staggs. In the criminal case, claimant testified she did not recall that the customer was at the club. Mr. Smith was still hospitalized but his wife testified in the criminal proceedings that he did not leave home to go to the club until approximately 11:45. Claimant was discovered lying on the ground by a person passing by the club shortly after midnight. The times did not leave enough time for the version claimant gave at the preliminary hearing. Based on evaluation of the credibility of claimant's testimony and these other factors, the ALJ denied benefits.

The Board agrees with and affirms the conclusion by the ALJ. Specifically, the Board concludes claimant's injury resulted from a personal dispute imported to the work place. The injury did not arise out of claimant's employment and for that reason is not compensable.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Jon L. Frobish on January 14, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Lyndon W. Vix, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director